

REMARKS

Claims 1-43 are pending in this application. By the Office Action, claims 1-43 are subject to a Restriction Requirement and an Election of Species Requirement. By this Amendment, claims 1-15, 19-26 and 41 are elected with traverse and are amended; and non-elected claims 16-18, 30, 33-35 and 42-43 are withdrawn.

I. Restriction Requirement

The Restriction Requirement requires restriction between Group I (claims 1-15 and 19-26), Group II (claims 16-18), Group III (claims 27-29, 31-32 and 36-38), Group IV (claims 30 and 33-34), Group V (claim 35), Group VI (claims 39-41), and Group VII (claims 42-43).

In response to the Restriction Requirement, Applicants hereby elect amended Group I, which as amended includes claims 1-15, 19-26 and 39-41, with traverse as to the restriction between Groups I and III.

National stage applications filed under 35 U.S.C. §371 are subject to unity of invention practice as set forth in PCT Rule 13, and are not subject to U.S. restriction practice. *See MPEP §1893.03(d).* PCT Rule 13.1 provides that an "international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept." PCT Rule 13.2 states:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

A lack of unity of invention may be apparent "*a priori*," that is, before considering the claims in relation to any prior art, or may only become apparent "*a posteriori*," that is, after

taking the prior art into consideration. *See* MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Lack of *a priori* unity of invention only exists if there is no subject matter common to all claims. *Id.* If *a priori* unity of invention exists between the claims, or, in other words, if there is subject matter common to all the claims, a lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. *Id.*

Group III claims are all directed to an oral composition that includes at least taurine, hypotaurine or salts thereof. Amended Group I claims are all directed to methods of treating various conditions using an oral composition that includes at least taurine, hypotaurine or salts thereof. Accordingly, all the claims of amended Group I and Group III share the common subject matter of an oral composition that includes at least taurine, hypotaurine or salts thereof and, therefore, *a priori* unity of invention exists between all the claims. Thus, for the present application, a lack of unity of invention has not been established. Therefore, Applicants respectfully submit that a restriction requirement based on a lack of unity of invention is improper.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the Restriction Requirement.

II. Election of Species Requirement

The courtesies extended to Applicant's representative by Examiner Kudla at the telephone interview held October 17, 2007, are appreciated. During this interview, Examiner Kudla stated that amended claims 39-41 would be considered part of amended Group I, but that in light of these amendments claim 41 would be subject to an election of species requirement.

Applicants hereby elect the species involving the use of taurine in combination with polyphenols. This election is made with traverse.

Applicants traverse the election of species requirement on the ground that claim 41 is not so broad as to place an undue burden on the Patent Office to search and examine the full scope of the claim. Rather, Applicants respectfully assert that search and examination of the entire scope of claim 41 could be conducted without undue burden on the Examiner, thus avoiding delay and expense to Applicants.

Applicants further understand, however, that upon search, examination and allowance of the elected species, search and examination will continue as to the non-elected species within the scope of claim 41.

III. Conclusion

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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